United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	James B. Moran	Sitting Judge if Other than Assigned Judge		
CASE NUMBER	03 C 5193	DATE	7/22/2004	
CASE TITLE	TREVOR VICK	EY vs. ASSET ACCEPTANCE, LLC., et al		
[1	n the following box (a) indicate the party fili	ng the motion, e.g., plaintiff, defenda	ant, 3rd party plaintiff, and (b) state briefly the nature	

of the motion being presented.]

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MEMORANDUM OPINION AND ORDER						
DOCKET ENTRY:						
(1)		Filed	motion of [use listing	g in "Motion" box above.]		
(2)		Brief in support of motion due				
(3)		Answer brief to motion due Reply to answer brief due				
(4)		Ruling/Hearing on set for at				
(5)		Status hearing[held/continued to] [set for/re-set for] on set for at				
(6)		Pretrial conference[held/continued to] [set for/re-set for] on set for at				
(7)						
(8)		[Bench/Jury trial] [Hearing] held/continued to at				
(9)						
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(11))	[For fi	urther detail see order	r attached to the original minute order.]		
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	No notices re	equired.			number of notices	Number Distribution
Notices mailed by judge's staff.				JUL 2 3 2004	1	
Notified counsel by telephone.				date docketed		
Docketing to mail notices. Mail AO 450 form.		ices.		17/1		
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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

TREVOR VICKEY,)	
Plaintiff,))	
vs.	No. 03 C 5193	JUL 2 3 2004
ASSET ACCEPTANCE, LLC; and)	
MC MAHAN & SIGUNICK, LTD.,)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

On July 1, 2004, we granted defendants' motion for summary judgment as to counts I, II and III of plaintiff's complaint. In doing so we neglected to discuss count IV, an individual claim against defendant Asset Acceptance alleging violations of the Fair Debt Collection Practices Act, 15 U.S.C.§ 1692e (FDCPA). For the following reasons, defendant's motion for summary judgment as to count IV is granted.

The FDCPA provides that "a debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e. Plaintiff claims that Asset Acceptance misrepresented plaintiff's date of delinquency by reporting the date that it opened the account rather than the date that the account was charged off by Discover. Plaintiff claims that such a practice could lead to the delinquency remaining on his credit record for more than seven years. He also argues that Asset Acceptance reported conflicting data to Experion and to other credit agencies.

The plaintiff produces no evidence supporting this claim other than the affidavit of Richard Le Febvre. Le Febvre admits, however, that he has not seen all of the relevant

No. 03 C 5193

documentation and does not understand the coding used by the credit services. The documents that he relied on in reaching his conclusions have not been offered into evidence or disclosed to the court. Asset Acceptance claims that it asked the major credit reporters to delete plaintiff's account; Le Febvre acknowledges that he cannot tell whether or not this was done. While he states that a number of dates appear in plaintiff's credit reports, there is nothing to indicate in what documents these dates are located or what they are intended to refer to. Plaintiff also produces nothing to contradict Asset Acceptance's argument that it was asked by Experion to report the date that the account was assigned, rather than the date of original delinquency. In the absence of any documentation showing that defendants actually reported incorrect dates or information to the credit agencies, plaintiff fails to create an issue of material fact as to count IV.

Finally, there is no indication that the dates used by Asset Acceptance had any effect on the attempt to collect plaintiff's debt. While statutory damages may be awarded even in the absence of actual harm to the plaintiff (see <u>Bartlett v. Heibl</u>, 128 F.3d 497, 499 (7th Cir. 1997)), there must be some indication that the defendant actually violated the statute by using a misrepresentation in connection with the collection of a debt. There is no indication that any "re-aging" affected the plaintiff's rights in any way.

CONCLUSION

For the foregoing reasons, defendant Asset Acceptance's motion for summary judgment as to count IV is granted.

JAMES B. MORAN
Senior Judge, U. S. District Court